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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,374	10/30/2003	W. Bradley Wilkes	15790.2	7893

7590  
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06/09/2009

EXAMINER

GREENE, DANIEL LAWSON

ART UNIT

PAPER NUMBER

3694

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/697,374

**Applicant(s)**

WILKES ET AL.

**Examiner**

DANIEL L. GREENE

**Art Unit**

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9, 10, 12, 15-21 and 35 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 9, 10, 12, 15-21 and 35 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date 4/21/09  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. In the response received 3/19/2009, Applicant amended claim 9, added new claim 35 and cancelled claims 1-8, 13, 14, and 22-34. Currently claims 9, 10, 12, 15-21 and 35 are pending. Applicants 3/19/2009 response is with regard to the previous Office action (Final) mailed 12/30/2008. An action on the merits of claims 9, 10, 12, 15-21 and 35 follows.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/19/2009 has been entered.

#### ***Response to Arguments***

3. Applicant's arguments filed 3/19/2009 have been fully considered but they are not persuasive.

4. First, the Examiner has already explained in the previous Office actions how one of ordinary skill in the art would have found it obvious to split apart the various transactions into their subsequent sub actions and that there is no novelty in performing those sub actions in various manners as long as the end result remains the same, i.e. the transaction is consummated. The Examiner cited case law in support of such and also brought in Hansmann to show it is old and well known for cell phones to have specific GSM cards with specific data.

5. Second, as discussed during the interview, each of the cited references discloses electronic payment and remittance systems capable of performing the claimed invention. That is, the Examiner explained that when a customer requires a refund, the merchant swipes the client's credit card and remits payment to the card. Accordingly the credit card would be considered the removable transaction device and the customer considered the merchant. Refund transactions can be performed for any number of customers (merchants).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. **Claims 9, 10, 12, 15-21 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art (APA) in view of case law for the reasons set forth in section 7 of the previous office action mailed 12/30/2008 which in turn refers back to section 9 of the previous office action mailed 7/24/2008.**

See the discussion set forth in section 3 above.

New claim 35 is rejected for at least the same reasons as claim 9.

7. **Claims 9, 10, 12, 15-21 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/004772 A1 to Templeton et al. in view of case law for the reasons set forth in section 8 of the previous office action mailed 12/30/2008 which in turn refers back to section 10 of the previous office action mailed 7/24/2008.**

See the discussion set forth in section 3 above.

New claim 35 is rejected for at least the same reasons as claim 9.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. GREENE whose telephone number is (571)272-6876. The examiner can normally be reached on Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. G./  
Examiner, Art Unit 3694  
2009-06-08

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Art Unit: 3694

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/James P Trammell/

Supervisory Patent Examiner, Art Unit 3694